

DEPARTMENT OF STATE REVENUE

**LETTER OF FINDINGS NUMBER: 00-0171
International Fuel Tax Agreement (IFTA) and
International Registration Plan (IRP)
For Years 1996, 1997, AND 1998**

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ISSUES

I. IFTA – Record Keeping

Authority: IC 6-6-4.1-14; IC 6-8.1-3-14; IFTA P560.100;
IFTA P560.300; IFTA P510.100; IFTA P530.100;
IFTA R1210.100; IFTA R1210.200; IFTA A550.200;
IFTA Article VIII R820

Registrant/Licensee protests auditor's assessment based on insufficient record keeping.

II. IRP – Record Keeping

Authority: IC 6-6-4.1-14; IC 6-8.1-3-14; IRP 1500; IRP 1502;
IRP Audit Procedure Manual 603

Registrant/Licensee protests auditor's assessment in which 100% of the miles driven were allocated to Indiana.

STATEMENT OF FACTS

Registrant/Licensee operates a petroleum refinery in Indiana. It also has terminals at four Indiana locations. Registrant/Licensee refines distillates and gasoline, and sells these products from its terminals. It also purchases and sells these commodities by barge load. The refinery and one of the terminals are connected to the barge facilities by a proprietary pipeline. There is a proprietary pipeline linking the refinery and terminals. The refinery and terminals receive products via barge, pipeline and truck. Much of the crude oil is received from small local oil wells and delivered to the refinery by Registrant/Licensee's own vehicles and via a proprietary pipeline. Upon multiple requests the Registrant failed to provide auditors with documentation of fuel purchases. Thus, pursuant to the rules of IFTA, the auditor presumed the Registrant/Licensee's consumed fuel to be non-tax-paid fuel. Inasmuch as registrant's base of

operations is located within Indiana's border with adjoining IRP jurisdictions, numerous jobs included multiple interstate deliveries. The Registrant/Licensee's original reported mileage was apportioned between Indiana and surrounding jurisdictions. Upon requests by auditors for documentation of such apportionment, none were forthcoming, therefore, Registrant/Licensee's records were classified by the auditor as unavailable. Thus, the auditor determined that Registrant/Licensee's records were inadequate for apportionment of mileage between the jurisdictions and assessed 100% of the mileage to Indiana along with the partial allocation to Illinois, Kentucky, Michigan, Ohio, Iowa, Minnesota, Missouri, and Wisconsin as reported by Registrant/Licensee. Registrant/Licensee is protesting these adjustments.

I. IFTA – Record Keeping

DISCUSSION

Registrant/Licensee alleged to have invoices for all fuel purchases, but the Department could not confirm this as Registrant/Licensee failed to provide such documentation to the auditor.

The Indiana Code provides for the joining of Indiana to the IFTA agreement via IC 6-6-4.1-14 and IC 6-8.1-3-14. IC 6-6-4.1-14 states in relevant part:

The commissioner or, with the commissioner's approval, the reciprocity commission created by IC 9-28-4 may enter into and become a member of the International Fuel Tax Agreement or other reciprocal agreements with the appropriate official or officials from any other state or jurisdiction . . . An agreement may be made under this subsection only with a state that grants equivalent privileges with respect to motor fuel consumed in the other state or jurisdiction and on which a tax has been paid to this state.

IC 6-8.1.3-14 states in relevant part:

The department, on behalf of the state, may enter into and become a member of the International Fuel Tax Agreement or other reciprocal agreements providing for the imposition of motor fuel taxes on an apportionment or allocation basis with the proper authority of any state . . .

The provisions of the IFTA manuals are applicable and IFTA P560.100 states in relevant part:

Retail purchases must be supported by a receipt or invoice, credit card receipt, automated vender generated invoice or transaction listing, or microfilm/microfiche of the receipt invoice. Receipts that have been altered or indicate erasure are not accepted for tax-paid credits unless the licensee can demonstrate the receipt is valid.

IFTA P560.300 state in relevant part:

An acceptable receipt or invoice must include, but shall not be limited to, the following:

- .005 Date of purchase;
- .010 Seller's name and address;
- .015 Number of gallons or liters purchased;
- .020 Fuel type;
- .025 Price per gallon or liter or total amount of sale;
- .030 Unit numbers; and
- .035 Purchaser's name

IFTA P510.100 states in relevant part:

The licensee is required to preserve records upon which the quarterly tax return is based for four years from the return due date or filing date, whichever is later, plus any time period included as a result of waivers or jeopardy assessments.

IFTA P530.100 states in relevant part:

Failure to maintain records upon which the licensee's true liability may be determined or to make records available upon proper request may result in an assessment as stated in IFTA Articles of Agreement Section R1200

IFTA R1210.100 states in relevant part:

In the event that any licensee . . .

.015 fails to maintain records from which the licensee's true liability may be determined, the base jurisdiction shall, on the basis of the best information available to it, determine tax liability of the licensee for each jurisdiction. The base jurisdiction shall, after adding the appropriate penalties and interest, serve the assessment upon the licensee in the same manner as an audit assessment or in accordance with the laws of the base jurisdiction. For purposes of assessment pursuant to .100.010 or .100.015, the base jurisdiction must issue a written request for records giving the licensee thirty (30) days to provide the records or to issue a notice of insufficient records.

IFTA R1210.200 states in relevant part:

The assessment made by a jurisdiction pursuant to this procedure shall be presumed to be correct and, in any case *where the validity of the assessment is questioned, the burden shall be on the licensee to establish a fair preponderance of evidence that the assessment is erroneous or excessive. (emphasis added).*

IFTA Articles of Agreement, Article VIII, R820 states in relevant part:

All motor fuel acquired that is normally subject to consumption tax is taxable unless proof to the contrary is provided by the licensee. The licensee must report all fuel placed in the supply tank of a qualified motor vehicle as taxable on the IFTA tax return. *(emphasis added).*

IFTA A550.200 states in relevant part:

When tax paid fuel documentation is unavailable, all claims for tax paid fuel will be disallowed. (emphasis added).

Registrant/Licensee argues that the Department is in error to presume taxability when original tickets or invoices cannot be produced. This argument is baseless and cannot stand. The plain language of the IFTA agreement itself requires that fuel normally subject to consumption tax be taxed unless proof to the contrary is provided by the licensee. In addition, it is the stated policy of the IFTA Audit Manual to disallow the tax paid fuel credit when tax paid fuel documentation is unavailable. The Registrant/Licensee has failed to provide such proof or documentation, therefore, it was not error for the Department to presume taxability for the fuel consumed by the Registrant/Licensee and deny the tax paid fuel credit.

FINDINGS

Licensee's protest is denied.

II. IRP – Record Keeping

DISCUSSION

The issue is based on IRP 1500,1502, and IRP Audit Procedures Manual 603.

The Indiana Code provides for the joining of Indiana to the IRP agreement via IC 6-6-4.1-14 and IC 6-8.1-3-14. IC 6-6-4.1-14 states in relevant part:

The commissioner or, with the commissioner's approval, the reciprocity commission created by IC 9-28-4 may enter into the International Registration Plan, the International Fuel Tax Agreement, or other reciprocal agreements with the appropriate official or officials of any other state or jurisdiction to exempt commercial motor vehicles licensed in the other state or jurisdiction from any of the requirements that would otherwise be imposed by this chapter . . .

IC 6-8.1-3-14 states in relevant part:

The department, on behalf of the state, may enter into and become a member of the International Fuel Tax Agreement or other reciprocal agreements providing for the imposition of motor fuel taxes on an apportionment or allocation basis with the proper authority of any state . . .

The IRP manuals lend guidance in this area and IRP 1500 states:

Any registrant whose application for apportioned registration has been accepted shall preserve the records on which it is based for a period of three years after the close of the registration year. Such records shall be made available to the Commissioner at his

request for audit as to accuracy of computation, payments, and assessment for deficiencies or allowances for credits, during the normal business hours of the day.

IRP 1502 states:

If any registrant fails to make records available to the Commissioner upon proper request or if any registrant fails to maintain records from which true liability may be determined, the Commissioner may, thirty days after written demand for an availability of records or notification of insufficient records, impose an assessment of liability based on the Commissioner's estimate of the true liability of such registrant as determined from information furnished by the registrant, information gathered by the Commissioner at his own instance, information available to the Commissioner concerning operations by similar registrants and such other pertinent information as may be available to the Commissioner.

IRP Audit Procedures Manual 603 states in relevant part:

As part of the initial audit procedures, the auditor requests the records that support apportioned registration application as filed. These records are the same records discussed during the initial contact with the registrant or registrant's agent. *If adequate records are not made available thirty days after notice is given, the registrant may be assessed the potential liability due to all jurisdictions or the registrant may be assessed 100% registration fees for the base jurisdiction.* Penalties may be imposed in addition to the estimated liability amounts in accordance with the laws of the base jurisdiction. . . . *(emphasis added).*

Registrant/Licensee protests the failure by the Department to issue a credit for IRP fees paid to other states. Registrant/Licensee argues that its Tax Manager was able to locate logs and that the Department would not review them. This argument is insufficient as Registrant/Licensee has not provided the Department with any such logs. It was further urged by the Registrant/Licensee that, due to severe downsizing, it could not sort through the volumes of paper to find the relevant documents. Again, this argument is unacceptable as the auditor has no duty to sift through piles of documents for the Registrant/Licensee. The Department was very flexible as several extensions of time were made in efforts to allow the Registrant/Licensee to locate the necessary documentation.

If the Registrant/Licensee had located the records, the assessment could have been adjusted to include best evidence available. As it now stands no records are available for review, thus it was not error to assess the Registrant/Licensee the full original reported mileage, as provided by the IRP Audit Procedures Manual.

FINDINGS

Registrant's protest is denied.